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October 7, 2005

Ms. Jennifer J. Johnson
Secretary, Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, NW
Washington, DC 20551

Re: Docket No. R-1234

To Whom It May Concern:

MasterCard International Incorporated ("MasterCard")¹ submits this comment letter in response to the Notice of Proposed Rulemaking, and the request for public comment, ("Proposal") issued by the Board of Governors of the Federal Reserve System ("Board") with respect to Regulation E and signage on automated teller machines ("ATMs"). The Proposal would also revise the Official Staff Commentary to Regulation E ("Commentary"). MasterCard appreciates the opportunity to provide its comments on the Proposal.

Section 205.16 of Regulation E provides that an ATM operator who imposes a fee on a consumer for initiating an electronic fund transfer ("EFT") or a balance inquiry must "provide notice that a fee *will* be imposed for providing [EFT] services or a balance inquiry." (Emphasis added.) This notice must be posted "in a prominent and conspicuous location on or at the [ATM]." According to the Proposal, several large institutions have inquired of the Board whether it is permissible under Section 205.16 to provide a notice on the ATM that a fee "may be" charged, as opposed to "will be" charged, for providing EFT services. This clarification is appropriate because many ATM operators, in particular those owned or operated by banks, apply ATM surcharges to some categories of their ATM users, but not others.

The Proposal would revise Regulation E to clarify explicitly that ATM operators may disclose on or at the ATM in all cases that a fee will be imposed or, in the alternative, disclose that a fee may be imposed on consumers initiating an EFT or a balance inquiry if there are circumstances under which some consumers would not be charged for such services. The Proposal does not modify the on-screen disclosure requirements in Section 205.16.

MasterCard strongly supports the Board's Proposal and urges its adoption without amendment. We believe that the Proposal would result in more accurate disclosures to

¹ MasterCard is a SEC-registered private share corporation that licenses financial institutions to use the MasterCard service marks in connection with a variety of payments systems.

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consumers. As the Board noted in the Proposal, many ATM operators may impose a fee for initiating an EFT using the ATM in some circumstances, but not all. For example, some network operating rules prohibit in many circumstances imposing a fee on EFTs initiated using an access device issued outside the United States. Other financial institutions have banded together to form "no surcharge alliances" or similar arrangements where the financial institutions agree not to surcharge customers of the other participating financial institutions. Therefore, in such circumstances and others, a disclosure on or at an ATM informing consumers that a fee "will" be charged is inherently false. We do not believe it is rational to impose such a result.

The Board has asked what adverse impact on consumers, if any, might result from a disclosure that states that an ATM surcharge will be imposed when the operator's practice is not to impose a surcharge on certain consumers. As one example, we believe that consumers may be inappropriately discouraged from using an ATM that does not impose a surcharge if the signage at the ATM states that a fee will be charged. For example, a consumer of a small bank that participates in an ATM alliance may not realize that he or she can use another participating bank's ATM without surcharge if the participating bank's disclosure states that the consumer will be surcharged. The consumer may simply default to a different ATM based on other considerations such as location. This would result in the consumer paying a fee that the consumer could have avoided with a more accurate disclosure.

We believe that the adoption of the Proposal would lead to more accurate consumer disclosures without detracting from the consumer protections provided in Section 205.16. In particular, the consumer would still be put on notice that a fee may be imposed for using the ATM, and the consumer would still be required to affirmatively accept the fee before continuing with the transaction.

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If you have any questions concerning our comments, or if we may otherwise be of assistance in connection with this issue, please do not hesitate to call me, at the number indicated above, or Michael F. McEneney at Sidley Austin Brown & Wood LLP, at (202) 736-8368, our counsel in connection with this matter.

Sincerely,



Joshua L. Peirez
Senior Vice President & Associate General Counsel

cc: Michael F. McEneney, Esq.